

House Engrossed

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**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 135

HOUSE BILL 2059

AN ACT

AMENDING SECTIONS 33-812, 44-302 AND 44-307, ARIZONA REVISED STATUTES;
RELATING TO ABANDONED PROPERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-812, Arizona Revised Statutes, is amended to
3 read:

4 33-812. Disposition of proceeds of sale

5 A. The trustee shall apply the proceeds of the trustee's sale in the
6 following order of priority:

7 1. To the costs and expenses of exercising the power of sale and the
8 sale, including the payment of the trustee's fees and reasonable attorney's
9 fees actually incurred.

10 2. To the payment of the contract or contracts secured by the trust
11 deed.

12 3. To the payment of all other obligations provided in or secured by
13 the trust deed and actually paid by the beneficiary before the trustee's
14 sale.

15 4. To the junior lienholders or encumbrancers in order of their
16 priority as they existed at the time of the sale. After payment in full to
17 all junior lienholders and encumbrancers payment shall be made to the
18 trustor, except that if the trustor has sold or transferred the property to
19 another owner before the trustee's sale, payment shall be made to the person
20 who is the owner of record at the time of the trustee's sale.

21 B. ~~The trustee may,~~ In the trustee's discretion, ~~AND~~ instead of any
22 one or more of the applications specified in subsection A of this section,
23 THE TRUSTEE MAY elect to deposit the balance of the proceeds with the county
24 treasurer in the county in which the sale took place pending an order of the
25 superior court in the county. On deposit of the balance of the monies and
26 after complying with subsection C of this section, the trustee shall be
27 discharged from all responsibility for acts performed in good faith according
28 to this chapter. The county treasurer shall reject any deposit that does not
29 comply with subsection C of this section.

30 C. If the trustee elects to deposit the balance of the sale proceeds
31 as prescribed by subsection B of this section, the trustee as plaintiff shall
32 commence a civil action in the superior court in the county in which the sale
33 occurred. The action shall name the applicable county treasurer as the
34 defendant. The trustee shall mail by certified or registered mail, with
35 postage prepaid, a conformed copy of the complaint that displays the filing
36 stamp of the court clerk to all persons, other than the beneficiary, who are
37 entitled to notice pursuant to section 33-809 and to any other person known
38 by the trustee to have an interest of record in the property at the time of
39 the sale. The trustee shall incorporate in or attach to the complaint:

40 1. A copy of any one of the following:

41 (a) The trustee sale guarantee.

42 (b) The title search used by the trustee in connection with the
43 trustee's sale of the subject property.

44 (c) A detailed description of the liens and encumbrances used by the
45 trustee in connection with the trustee's sale of the property.

1 2. A copy of the list of the persons and each of the addresses 1
2 which the complaint will be mailed.

3 3. A detailed description of any disbursements made by the trustee
4 pursuant to this section.

5 The trustee may withhold from the proceeds of the sale a reasonable trustee'
6 fee, a reasonable attorney's fee actually incurred and the costs of filin
7 the complaint, depositing the proceeds and mailing the notices.

8 D. Upon filing the complaint, the trustee as plaintiff is discharge
9 without prejudice from the proceedings.

10 E. Any person with a recorded or other legal interest in the property
11 at the time of the sale may apply for the release of the proceeds by filing
12 an application for distribution in the civil action that was filed by the
13 trustee pursuant to subsection C of this section. The applicant shall mail
14 postage prepaid by any form of mail that requires a signed and returned
15 receipt a copy of the application to THE COUNTY TREASURER AND all persons at
16 each of the addresses named on the list of persons that is incorporated in
17 or attached to the complaint. On return of the signed receipt or the
18 undelivered or unclaimed original envelope, the applicant shall file with the
19 court an affidavit that states that the application was mailed to the person
20 and that the application was either:

21 1. Received, as evidenced by the receipt. The applicant shall attach
22 to the affidavit a copy of the receipt.

23 2. Not received, as evidenced by the original returned envelope. The
24 applicant shall attach to the affidavit the original unopened and undelivered
25 or unclaimed returned envelope.

26 F. Any person who receives the application or who claims a right to
27 the proceeds may file a response to the application within thirty days of the
28 mailing of the application. The person filing a response shall mail a copy
29 of the response to each applicant. Within ten calendar days from the date
30 the response is mailed, an applicant may file with the clerk and mail to each
31 respondent a reply to the response. On expiration of the time for filing a
32 reply, an applicant shall provide the court with postage prepaid business
33 envelopes that are addressed to all persons who are entitled to receive
34 copies of the complaint pursuant to subsection C of this section.

35 G. EXCEPT AS PROVIDED IN SUBSECTION J OF THIS SECTION, the court shall
36 issue an order to the county treasurer to release the proceeds deposited with
37 the county treasurer to the party entitled to receive them after applying the
38 priorities prescribed by subsection A of this section. On notice to all
39 persons who have received a copy of the complaint or who have filed a
40 responsive pleading, the court may, and if there are competing claims to the
41 proceeds, the court shall, hold a hearing to determine entitlement to the
42 proceeds. If the court finds that a person other than an applicant or
43 respondent has a superior right to receive the proceeds, the court shall not
44 issue an order on the proceeds until one hundred eighty days from the date
45 the complaint was filed. At any time before the expiration of the one

1 hundred eighty day period, an applicant or respondent may move for a hearing
2 to determine whether the claimed superior right is valid or enforceable and
3 whether the claim is entitled to receive priority over the claim of the
4 applicant or respondent. The motion shall set forth the specific facts and
5 evidence that support the applicant's or respondent's position and shall be
6 mailed to all persons who have received a copy of the complaint or filed a
7 responsive pleading. If a response is not filed within the one hundred
8 eighty day period by the person found by the court to have a superior right
9 to receive the proceeds, the court shall enter an order in favor of any
10 applicant or respondent entitled to the proceeds. On release of the proceeds,
11 the county treasurer may assess and deduct from the proceeds a reasonable fee
12 not to exceed one hundred dollars for the treasurer's costs associated with
13 the civil action.

14 H. Within ninety days after completion of the sale, the trustee shall
15 apply the proceeds of the sale pursuant to subsection A of this section or
16 shall deposit the proceeds with the treasurer pursuant to subsection B of
17 this section.

18 I. EXCESS PROCEEDS DEPOSITED WITH THE COUNTY TREASURER PURSUANT TO
19 SUBSECTION B OF THIS SECTION ARE PRESUMED ABANDONED IF THE MONIES REMAIN WITH
20 THE TREASURER FOR AT LEAST THREE YEARS FROM THE DATE OF DEPOSIT AND THERE IS
21 NO PENDING APPLICATION FOR DISTRIBUTION.

22 J. EXCESS PROCEEDS THAT ARE FIFTY DOLLARS OR LESS AND THAT ARE
23 PRESUMED ABANDONED UNDER THIS SECTION SHALL BE TRANSFERRED TO THE COUNTY
24 GENERAL FUND. NO FURTHER APPLICATION FOR DISTRIBUTION BY ANY APPLICANT OR
25 CLAIM BY THE DEPARTMENT OF REVENUE MAY BE MADE ON THESE MONIES.

26 K. FOR ALL EXCESS PROCEEDS THAT ARE GREATER THAN FIFTY DOLLARS AND
27 THAT ARE PRESUMED ABANDONED UNDER THIS SECTION, THE COUNTY TREASURER SHALL
28 SUBMIT A REPORT TO THE DEPARTMENT OF REVENUE PURSUANT TO SECTION 44-307. THE
29 COUNTY TREASURER MAY ASSESS AND DEDUCT FROM THE PROCEEDS A REASONABLE FEE OF
30 NOT MORE THAN FIFTY DOLLARS FOR THE TREASURER'S COSTS ASSOCIATED WITH
31 REPORTING EACH DEPOSIT.

32 L. THE COUNTY TREASURER SHALL BE DISCHARGED FROM ALL CLAIMS AND
33 RESPONSIBILITY FOR ACTS PERFORMED IN GOOD FAITH PURSUANT TO THIS CHAPTER
34 AFTER REMITTING THE PRESUMED ABANDONED EXCESS PROCEEDS TO THE DEPARTMENT OF
35 REVENUE PURSUANT TO SECTION 44-308.

36 Sec. 2. Section 44-302, Arizona Revised Statutes, is amended to read:
37 44-302. Presumptions of abandonment

38 A. Property is presumed abandoned if it is unclaimed by the apparent
39 owner according to the following schedule:

40 1. A traveler's check is presumed abandoned fifteen years after
41 issuance.

42 2. A money order or similar written instrument, other than a third
43 party bank check, is presumed abandoned seven years after issuance.

44 3. Any stock or other equity interest in a business association or
45 financial organization, including a security entitlement under title 47,

1 chapter 8, is presumed abandoned three years after any of the following,
2 whichever occurs first:

3 (a) The date of the most recent dividend, stock split or other
4 distribution that is unclaimed by the apparent owner.

5 (b) The date of the second mailing of a statement of account or other
6 notification or communication that was returned as undeliverable.

7 (c) The date the holder discontinued mailings, notifications or
8 communications to the apparent owner.

9 4. The principal on debt, other than a bearer bond or an original
10 issue discount bond, of a business association or financial organization is
11 presumed abandoned five years after the maturity date and the interest on the
12 debt is presumed abandoned five years after the payment date.

13 5. A demand, savings or time deposit, including a deposit that is
14 automatically renewable, and any interest or dividends are presumed abandoned
15 five years after maturity or the date of the last indication by the owner of
16 interest in the property, whichever occurs first. For the purposes of this
17 paragraph, a deposit that is automatically renewable is deemed matured on its
18 initial date of maturity, unless the owner has consented to a renewal at or
19 about the time of the renewal and the consent is in writing or is evidenced
20 by any memorandum or other record on file with the holder.

21 6. Credits owed to a customer as a result of a retail business
22 transaction are presumed abandoned five years after the obligation accrued.

23 7. An amount owed by an insurance company on a life or endowment
24 insurance policy or an annuity that has matured or terminated is presumed
25 abandoned five years after the obligation to pay arose or, in the case of a
26 policy or annuity that is payable on proof of death, the amount is presumed
27 abandoned two years after the insured has attained, or would have attained
28 if the insured were living, the limiting age under the mortality table on
29 which the reserve is based. For the purposes of this paragraph all of the
30 following conditions apply:

31 (a) If a person other than the insured or annuitant is entitled to the
32 owed amount and the person's address is not known to the company or it is not
33 definite and certain from the records of the company who is entitled to the
34 amount, it is presumed that the last known address of the person who is
35 entitled to the amount is the same as the last known address of the insured
36 or annuitant according to the company's records.

37 (b) Notwithstanding any law, if the company learns of the death of the
38 insured or annuitant and the beneficiary has not communicated with the
39 insurer within four months after the death, the company shall take reasonable
40 steps to pay the proceeds to the beneficiary.

41 (c) Every change of beneficiary form issued by an insurance company
42 under any life or endowment insurance policy or annuity contract to an
43 insured or owner who is a resident of this state shall request the following
44 information:

1 (i) The name of each beneficiary, or if a class of beneficiaries is
2 named, the name of each current beneficiary in the class.

3 (ii) The address of each beneficiary.

4 (iii) The relationship of each beneficiary to the insured.

5 8. A life or endowment insurance policy or annuity contract not
6 matured by actual proof of the death of the insured or annuitant according
7 to the company's records is deemed matured and the proceeds are deemed due
8 and payable and are presumed abandoned after two years if all of the
9 following conditions apply:

10 (a) The insured has attained, or would have attained if the insured
11 were living, the limiting age under the mortality table on which the reserve
12 is based.

13 (b) The policy was in force at the time the insured attained or would
14 have attained the limiting age specified in subdivision (a) of this
15 paragraph.

16 (c) Neither the insured nor any other person who appears to have an
17 interest in the policy within the last two years according to the company's
18 records has assigned, readjusted or paid premiums on the policy or subjected
19 the policy to a loan, corresponded in writing with the company concerning the
20 policy or otherwise indicated an interest as evidenced by a memorandum or any
21 other record on file with and prepared by an employee of the company.

22 9. Property that is distributable by a business association or
23 financial organization in a course of dissolution is presumed abandoned one
24 year after the property becomes distributable.

25 10. Property that is received by a court as proceeds of a class action
26 and that is not distributed pursuant to the judgment is presumed abandoned
27 one year after the distribution date.

28 11. Property that is held by a court, government or governmental
29 subdivision, agency or instrumentality, except for support as defined in
30 section 25-500 or for spousal maintenance, is presumed abandoned ~~one year~~
31 THREE YEARS after the property becomes distributable. Monies held for the
32 payment of warrants by a state agency that remain unclaimed by the owner at
33 the time of the void date printed on the face of the warrant are presumed
34 abandoned. For purposes of this paragraph, "governmental subdivision" does
35 not include a special taxing district defined in section 48-241.

36 12. Wages or other compensation for personal services is presumed
37 abandoned one year after the compensation becomes payable.

38 13. Property in any individual retirement account, defined benefit plan
39 or other account or plan that qualifies for tax deferral under the income tax
40 laws of the United States is presumed abandoned three years after any of the
41 following, whichever occurs first:

42 (a) The date of the distribution or attempted distribution of the
43 property.

44 (b) The date of the required distribution as stated in the plan or
45 trust agreement that governs the plan.

1 (c) If determinable by the holder, the date specified in the income
2 tax laws of the United States by which distribution of the property must
3 begin in order to avoid a tax penalty.

4 14. Any amount that is payable on a check, draft or similar instrument
5 on which a financial organization or business association is directly liable,
6 including a cashier's check and a certified check, and that has been
7 outstanding for more than five years after the check, draft or similar
8 instrument was payable or after issuance if payable on demand is presumed
9 abandoned unless within five years the owner has communicated in writing with
10 the financial organization or business association concerning the check,
11 draft or similar instrument or otherwise indicated an interest as evidenced
12 by a memorandum or any other record on file and prepared by an employee of
13 the financial organization or business association.

14 15. All other property is presumed abandoned five years after the
15 owner's rights to demand the property or after the obligation to pay or
16 distribute the property arises, whichever occurs first.

17 16. EXCESS PROCEEDS DEPOSITED WITH THE COUNTY TREASURER PURSUANT TO
18 SECTION 33-812 ARE PRESUMED ABANDONED IF THE MONIES REMAIN WITH THE TREASURER
19 FOR AT LEAST THREE YEARS FROM THE DATE OF DEPOSIT AND THERE IS NO PENDING
20 APPLICATION FOR DISTRIBUTION.

21 B. At the time that an interest is presumed abandoned under subsection
22 A OF THIS SECTION, any other property right accrued or accruing to the owner
23 as a result of the interest, and not previously presumed abandoned, is also
24 presumed abandoned.

25 C. Property is unclaimed if, for the applicable period prescribed in
26 subsection A of this section, the apparent owner has not communicated in
27 writing with the holder or communicated by other means reflected in a
28 contemporaneous record that is prepared by or on behalf of the holder and
29 that concerns the property or the account or accounts in which the property
30 is held and has not otherwise indicated an interest in the property and if
31 the holder has not communicated in writing with regard to the property that
32 would otherwise be unclaimed. A communication with an owner by a person
33 other than the holder or the holder's representative who has not identified
34 the property in writing to the owner is not an indication of interest in the
35 property by the owner.

36 D. An indication of an owner's interest in property includes:

37 1. The presentment of any check or other instrument of payment of any
38 dividend or other distribution that is made with respect to any account,
39 underlying stock or other interest in a business association or financial
40 organization. If the distribution is made by electronic or similar means an
41 indication of an owner's interest includes evidence that the distribution has
42 been received.

43 2. Activity directed by the owner in the account in which the property
44 is held, including a direction by the owner to increase, decrease or change
45 the amount or type of property held in the account.

- 1 3. The making of a deposit to or withdrawal from a bank account.
- 2 4. The payment of a premium with respect to a property interest in an
- 3 insurance policy. The application of an automatic premium loan provision or
- 4 any other nonforfeiture provision in an insurance policy does not prevent a
- 5 policy from maturing or terminating if the insured has died or if the insured
- 6 or the beneficiary of the policy has otherwise become entitled to the
- 7 proceeds before the depletion of the cash surrender value of a policy by the
- 8 application of those provisions.
- 9 E. Property is payable or distributable notwithstanding the owner's
- 10 failure to make demand or present an instrument or document otherwise
- 11 required to obtain payment.
- 12 Sec. 3. Section 44-307, Arizona Revised Statutes, is amended to read:
- 13 44-307. Report of abandoned property
- 14 A. A holder of property that is presumed abandoned shall make a report
- 15 to the department concerning the property.
- 16 B. The report shall be verified and shall contain all of the
- 17 following:
- 18 1. A description of the property.
- 19 2. Except for a traveler's check or money order, the name, if known,
- 20 the last known address, if any, and the social security number or taxpayer
- 21 identification number, if readily ascertainable, of the apparent owner of
- 22 property with a value of at least fifty dollars.
- 23 3. An aggregate amount of items with a value of less than fifty
- 24 dollars each.
- 25 4. For an amount of at least fifty dollars held or owing under an
- 26 annuity or a life or endowment insurance policy, the full name and last known
- 27 address of the annuitant or insured and of the beneficiary.
- 28 5. For property held in a safe deposit box or any other safekeeping
- 29 depository, an indication of the place where it is held and where it may be
- 30 inspected by the department and any amount owing to the holder.
- 31 6. The date, if any, on which the property became payable, demandable
- 32 or returnable and the date of the last transaction with the apparent owner
- 33 of the property.
- 34 7. Other information that the department by rule deems necessary for
- 35 the administration of this chapter.
- 36 C. If a holder of property that is presumed abandoned is a successor
- 37 to another person who previously held the property for the apparent owner or
- 38 the holder has changed the holder's name while holding the property, the
- 39 holder shall file with the report the holder's former names, if any, and the
- 40 known names and addresses of all previous holders of the property.
- 41 D. A life insurance company that is a holder of property that is
- 42 presumed abandoned shall file the report prescribed by this section before
- 43 May 1, and the report shall cover the prior calendar year. Any other holder
- 44 of property that is presumed abandoned shall file the report before November
- 45 1 and the report shall cover the last twelve months before July 1 of that

1 year. A holder may make a onetime election to annually report the property
2 at the same time it reports its income for the purposes of income tax
3 pursuant to title 43.

4 E. Prior to one hundred twenty days before the holder of property that
5 is presumed abandoned files the report prescribed in this section, the holder
6 shall send a written notice to the apparent owner that states that the holder
7 is in possession of the property subject to this chapter if all of the
8 following apply:

9 1. The holder has an address in the holder's records for the apparent
10 owner and the records do not indicate that the address is inaccurate.

11 2. The claim of the apparent owner is not barred by any other law of
12 this state.

13 3. The value of the property is at least fifty dollars.

14 F. Before the date for filing the report, the holder of property that
15 is presumed abandoned may request the department to extend the time for
16 filing the report. The department may grant the extension for good cause.
17 On receipt of the extension, the holder may make an interim payment on the
18 amount the holder estimates will ultimately be due and that payment
19 terminates the accrual of additional interest on the amount paid.

20 G. If the laws of this state or the terms of the life insurance policy
21 require the INSURANCE company to give notice to the insured or owner that any
22 automatic premium loan provision or other nonforfeiture provision has been
23 exercised and the notice given to an insured or owner whose last known
24 address according to the company's records is in this state is undeliverable,
25 the company shall make a reasonable search to ascertain the policyholder's
26 correct address to which the notice must be mailed.

27 H. State agencies that hold monies for the payment of void warrants
28 shall report to the department in a format prescribed by the department all
29 warrants voided in the previous month not later than the tenth day of each
30 month.

31 I. A COUNTY TREASURER HOLDING EXCESS PROCEEDS THAT ARE PRESUMED
32 ABANDONED PURSUANT TO SECTIONS 33-812 AND 44-302 SHALL FILE THE REPORT
33 PRESCRIBED BY THIS SECTION ON OR BEFORE NOVEMBER 1. THE REPORT SHALL COVER
34 THE PRIOR FISCAL YEAR AND INCLUDE A COPY OF ALL DOCUMENTATION FILED WITH THE
35 COUNTY TREASURER.

36 Sec. 4. Initial reports; abandoned property

37 As prescribed in section 44-307, Arizona Revised Statutes, the initial
38 report of excess proceeds that are presumed abandoned pursuant to sections
39 33-812 and 44-302, Arizona Revised Statutes, shall include excess proceeds
40 due without any interest or penalties by November 1, 2004 and shall include
41 all excess proceeds that would have been presumed abandoned within twenty
42 years before July 1, 2004.

43 Sec. 5. Retroactivity

44 This act is effective retroactively to from and after June 30, 2004.

APPROVED BY THE GOVERNOR APRIL 23, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2004.